

JUDGE COTE

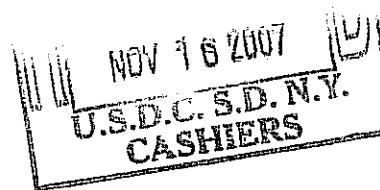
07 CV 10373

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BROADCAST MUSIC, INC.; SONGS OF UNIVERSAL, INC.; EMI VIRGIN SONGS, INC. d/b/a EMI LONGITUDE MUSIC; KEN ADAMANY, RICK NIELSEN, BRAD CARLSON, ROBIN ZANDER and TOM PETERSON, a partnership d/b/a ADULT MUSIC; SCREEN GEMS-EMI MUSIC, INC.; JONATHAN SIEBLES d/b/a LESS THAN ZERO MUSIC; TONY FAGENSON d/b/a SOUTHFIELD ROAD MUSIC; JAMES MAXWELL STUART COLLINS, an individual d/b/a FAKE AND JADED MUSIC; PAUL SIMON d/b/a PAUL SIMON MUSIC; EMI BLACKWOOD MUSIC INC.; COUNTING CROWS, LLC d/b/a JONES FALLS MUSIC; ROBERT KUYKENDALL, RICHARD A. REAM, BRUCE JOHANNESSEN and BRETT M. SYCHAK, a partnership d/b/a CYANIDE PUBLISHING,



CIVIL ACTION NO.:

COMPLAINT

v.

GOTHAM YARD CORP. d/b/a SESSION 73 and PETER CORBERT THOMAS, HUNTER HULSHIZER, and JOSEPH GRILLO, each individually,

Defendants.

X

Plaintiffs, by their attorneys, for their Complaint against Defendants, allege as follows (on knowledge as to Plaintiffs; otherwise on information and belief):

JURISDICTION AND VENUE

1. This is a suit for copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. Sections 101 et seq. (the "Copyright Act"). This Court has jurisdiction pursuant to 28 U.S.C. Section 1338(a).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1400(a).

THE PARTIES

3. Plaintiff, Broadcast Music, Inc. ("BMI"), is a corporation organized and existing under the laws of the State of New York. BMI's principal place of business is 320 West 57th Street, New York, New York 10019. BMI has been granted the right to license the public performance rights in approximately three million copyrighted musical compositions (the "BMI repertoire"), including those which are alleged herein to have been infringed.

4. The other Plaintiffs are the owners of the copyrights in the musical compositions which are the subject of this lawsuit. All Plaintiffs are joined pursuant to Fed. R. Civ. P. 17(a) and 19(a).

5. Defendant Gotham Yard Corp. is a corporation organized and existing under the laws of the state of New York, which operates, maintains and controls an establishment known as Session 73, located at 1359 1st Avenue, New York, New York 10021, in this district (the "Establishment").

6. In connection with the operation of this business, Defendant Gotham Yard Corp. publicly performs musical compositions and/or causes musical compositions to be publicly performed.

7. Defendant Peter Corbert Thomas is an officer of Defendant Gotham Yard Corp. with primary responsibility for the operation and management of that corporation and the Establishment.

8. Defendant Peter Corbert Thomas has the right and ability to supervise the activities of Defendant Gotham Yard Corp. and a direct financial interest in that corporation and the Establishment.

9. Defendant Hunter Hulshizer is an officer of Defendant Gotham Yard Corp. with primary responsibility for the operation and management of that corporation and the Establishment.

10. Defendant Hunter Hulshizer has the right and ability to supervise the activities of Defendant Gotham Yard Corp. and a direct financial interest in that corporation and the Establishment.

11. Defendant Joseph Grillo is an officer of Defendant Gotham Yard Corp. with primary responsibility for the operation and management of that corporation and the Establishment.

12. Defendant Joseph Grillo has the right and ability to supervise the activities of Defendant Gotham Yard Corp. and a direct financial interest in that corporation and the Establishment.

CLAIMS OF COPYRIGHT INFRINGEMENT

13. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 12.

14. Plaintiffs allege seven (7) claims of copyright infringement, based upon Defendants' unauthorized public performance of musical compositions from the BMI repertoire. All of the claims for copyright infringement joined in this Complaint are governed by the same legal rules and involve similar facts. Joinder of these claims will promote the convenient administration of justice and will avoid a multiplicity of separate, similar actions against Defendants.

15. Annexed as the Schedule and incorporated herein is a list identifying some of the many musical compositions whose copyrights were infringed by Defendants. The Schedule contains information on the seven (7) claims of copyright infringement at issue in this action. Each numbered claim has the following eight lines of information: Line 1 providing the claim number; Line 2 listing the title of the musical composition related to that claim; Line 3 identifying the writer(s) of the musical composition; Line 4 noting the publisher(s) of the musical composition and the plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the copyright registration was issued for the musical composition; Line 6 indicating the Registration number(s); Line 7 showing the date(s)

of infringement; and Line 8 identifying the location of the establishment where the infringement occurred.

16. Each of the musical compositions identified on the Schedule, Line 2, were created by the persons named on Line 3 (all references to Lines are lines on the Schedule).

17. On or about the dates indicated on Line 5, the publishers named on Line 4 (including any predecessors in interest), complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing the numbers listed on Line 6.

18. On the dates listed on Line 7, Plaintiff BMI was and still is the licensor of the public performance rights in the musical compositions identified on Line 2. On the dates listed on Line 7, the Plaintiffs listed on Line 4 were and still are the owners of the copyright in the respective musical composition listed on Line 2.

19. On the dates listed on Line 7, Defendants performed and/or caused the musical compositions identified on Line 2 to be publicly performed at the Establishment without a license or permission to do so. Thus, Defendants have committed copyright infringement.

20. The specific acts of copyright infringement alleged, as well as Defendants' entire course of conduct, have caused and are causing Plaintiffs great and incalculable damage. By continuing to provide unauthorized public performances of works in the BMI

repertoire at the Establishment, Defendants threaten to continue committing copyright infringement. Unless this Court restrains Defendants from committing further acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that:

(I) Defendants, their agents, servants, employees, and all persons acting under their permission and authority, be enjoined and restrained from infringing, in any manner, the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. Section 502;

(II) Defendants be ordered to pay statutory damages, pursuant to 17 U.S.C. Section 504(c);

(III) Defendants be ordered to pay costs, including a reasonable attorney's fee, pursuant to 17 U.S.C. Section 505; and

(IV) That Plaintiffs have such other and further relief as is just and equitable.

Dated: November 14, 2007

By: 

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Schedule

| | | |
|--------|-------------------------|--|
| Line 1 | Claim No. | 1 |
| Line 2 | Musical Composition | Devil Went Down To Georgia a/k/a The Devil Went Down To Georgia |
| Line 3 | Writer(s) | Charles E. (Charlie) Daniels; Tom Crain; William Joel (Taz) DiGregorio; Fred Edwards; Charlie Hayward; James W. Marshall |
| Line 4 | Publisher Plaintiff(s) | Songs of Universal, Inc. |
| Line 5 | Date(s) of Registration | 1/29/79 8/10/79 |
| Line 6 | Registration No(s). | PAu 84-340 PA 42-829 |
| Line 7 | Date(s) of Infringement | 4/29/07 |
| Line 8 | Place of Infringement | Session 73 |

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|--------|-------------------------|--|
| Line 1 | Claim No. | 2 |
| Line 2 | Musical Composition | Get Down Tonight |
| Line 3 | Writer(s) | Harry W. Casey |
| Line 4 | Publisher Plaintiff(s) | EMI Virgin Songs, Inc. d/b/a EMI Longitude Music |
| Line 5 | Date(s) of Registration | 6/12/75 6/21/76 |
| Line 6 | Registration No(s). | Eu 591389 Ep 354211 |
| Line 7 | Date(s) of Infringement | 4/28/07 |
| Line 8 | Place of Infringement | Session 73 |

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|--------|-------------------------|--|
| Line 1 | Claim No. | 3 |
| Line 2 | Musical Composition | I Want You To Want Me |
| Line 3 | Writer(s) | Rick Nielsen |
| Line 4 | Publisher Plaintiff(s) | Ken Adamany, Rick Nielsen, Brad Carlson, Robin Zander and Tom Peterson, a partnership d/b/a Adult Music; Screen Gems-EMI Music, Inc. |
| Line 5 | Date(s) of Registration | 7/7/77 4/20/79 |
| Line 6 | Registration No(s). | Eu 809938 PA 42-276 |
| Line 7 | Date(s) of Infringement | 4/29/07 |
| Line 8 | Place of Infringement | Session 73 |

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|--------|-------------------------|--|
| Line 1 | Claim No. | 4 |
| Line 2 | Musical Composition | Inside Out |
| Line 3 | Writer(s) | James Maxwell Stuart Collins; Jonathan Lee Siebeis; Anthony Edward Fagenson |
| Line 4 | Publisher Plaintiff(s) | Jonathan Siebeis, an individual dba Less Than Zero Music; Tony Fagenson, an individual dba Southfield Road Music; James Maxwell Stuart Collins, an individual dba Fake And Jaded Music |
| Line 5 | Date(s) of Registration | 6/18/98 |
| Line 6 | Registration No(s). | PA 896-254 |
| Line 7 | Date(s) of Infringement | 4/29/07 |
| Line 8 | Place of Infringement | Session 73 |

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|--------|-------------------------|--|
| Line 1 | Claim No. | 5 |
| Line 2 | Musical Composition | Me And Julio Down By The Schoolyard |
| Line 3 | Writer(s) | Paul Simon |
| Line 4 | Publisher Plaintiff(s) | Paul Simon, an individual d/b/a Paul Simon Music |
| Line 5 | Date(s) of Registration | 11/15/71 |
| Line 6 | Registration No(s). | Eu 292677 |
| Line 7 | Date(s) of Infringement | 4/29/07 |
| Line 8 | Place of Infringement | Session 73 |

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|--------|-------------------------|--|
| Line 1 | Claim No. | 6 |
| Line 2 | Musical Composition | Mr. Jones a/k/a Mister Jones |
| Line 3 | Writer(s) | Adam Duritz; David Bryson; Matt Walley; Charlie Gillingham; Steve Bowman |
| Line 4 | Publisher Plaintiff(s) | EMI Blackwood Music Inc.; Counting Crows, LLC d/b/a Jones Falls Music |
| Line 5 | Date(s) of Registration | 5/31/94 11/24/97 |
| Line 6 | Registration No(s). | PA 708-856 PA 880-966 |
| Line 7 | Date(s) of Infringement | 4/28/07 |
| Line 8 | Place of Infringement | Session 73 |

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|--------|-------------------------|--|
| Line 1 | Claim No. | 7 |
| Line 2 | Musical Composition | Talk Dirty To Me |
| Line 3 | Writer(s) | Bret M. Sychak a/k/a Bret Michaels; Bruce Johannesson a/k/a C.C. DeVille; Robert Kuykendall a/k/a Bobby Dall; Richard A. Ream a/k/a Rikkie Rockett |
| Line 4 | Publisher Plaintiff(s) | Robert Kuykendall; Richard A. Ream; Bruce Johannesson and Bret M. Sychak, a partnership d/b/a Cyanide Publishing |
| Line 5 | Date(s) of Registration | 3/19/87 |
| Line 6 | Registration No(s). | PA 322-917 |
| Line 7 | Date(s) of Infringement | 4/29/07 |
| Line 8 | Place of Infringement | Session 73 |
